

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

BRYNDON FISHER et al.,)
Plaintiffs,)
v.) Nos. 13-608C & 13-672C
THE UNITED STATES,) (Senior Judge Margaret M. Sweeney)
Defendant.)

DEFENDANT'S UNOPPOSED MOTION TO AMEND SCHEDULE

Pursuant to Rule 6(b) of the Rules of the United States Court of Federal Claims, defendant, the United States, respectfully requests that the Court amend the schedule it set in the show cause order it issued in this case, ECF No. 93, as follows below. This is our first request for an amendment to the scheduling order. Counsel for plaintiffs, Bryndon Fisher *et al.*, has indicated that plaintiffs do not oppose our request.

On February 15, 2023, the Court entered an Order denying plaintiffs' request to continue the stay in this matter, lifting the stay, ordering plaintiffs to show cause why their claims should not be dismissed, and setting a schedule for briefing on that show cause filing. ECF No. 93 at 4. Pursuant to that schedule, plaintiffs filed their response to the show cause order on March 15, 2023. ECF No. 94.

Plaintiffs' response recognizes that the Federal Circuit's decision in *Fairholme Funds, Inc. v. United States*, 26 F.4th 1274 (Fed. Cir. 2022), *cert. denied*, No. 22-100, 2023 WL 124023 (U.S. Jan. 9, 2023), "constitutes binding precedent that this Court must follow." ECF No. 94 at 1. Moreover, plaintiffs "acknowledge that the Federal Circuit's binding decision in *Fairholme Funds* requires this Court to dismiss [this action]." *Id.* at 2. Plaintiffs indicate, however, that they do not believe that *Fairholme* was correctly decided and intend to appeal a dismissal

pursuant to that binding precedent, asking the Federal Circuit to review such an appeal *en banc* and “to overturn its decision in *Fairholme*.” *Id.* Plaintiffs additionally assert that they “were not parties in any of the cases addressed in *Fairholme Funds*,” so “that decision is not collateral estoppel or *res judicata* but instead is merely binding precedent.” *Id.* at 1 n.1.

The United States disagrees with plaintiffs’ assertion that preclusion does not apply to bar their claims. Although we agree with plaintiffs that binding precedent in *Fairholme* requires dismissal of plaintiffs’ complaint, we intend to demonstrate that preclusion principles also bar plaintiffs’ claims.

Plaintiffs’ planned course of action mirrors those planned by plaintiffs in other similar actions pending before this Court. *See Wazee St. Opportunities Fund IV LP v. United States*, No. 18-1124C (Fed. Cl.); *Quinn Opportunities Master LP. v. United States*, No. 18-1240C (Fed. Cl.). In those cases, the Court has set briefing schedules that permit the United States until June to file its motions to dismiss, which the United States anticipates will include argument regarding preclusion. *See Wazee St*, No. 18-1124C, ECF No. 29 (June 2); *Quinn*, No. 18-1240C, ECF No. 24 (June 16).

Likewise, in this case the United States requires additional time to develop and brief, following review within relevant Federal agencies, its position regarding preclusion. Accordingly, the United States respectfully requests that the Court amend the briefing schedule as follows:

June 2, 2023	Defendant shall file its response to plaintiffs’ brief in response to the Court’s show cause order
June 16, 2023	Plaintiff shall file any reply

Respectfully submitted,

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